Supreme Court of the United States

OCTOBER TERM, 1963

No. 1088

FRANCIS J. DENISTER,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITIONER'S REPLY AFFIDAVIT

FRANK SERIO
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PETITIONER'S REPLY AFFIDAVIT

STATE OF NEW YORK,
COUNTY OF KINGS, *ss.*:

FRANK SERR, being duly sworn, deposes and says:

That he is the attorney for the petitioner.

The brief of the United States in opposition to the petition for certiorari, received today, admits that the petition was duly filed with the Clerk of the Supreme Court of the United States and with the office of the Solicitor General within the time limit of May 4, 1964, namely on *May 1, 1964*. However, it raises the question of the filing of the certified record itself after May 4, 1964, namely on *May 8, 1964*, and states that such a short delay was not a timely compliance with the Rules.

The answer is clear: the short delay in filing certified copy of record was not due to the fault of petitioner.

Your deponent went personally to the office of the Clerk of the Court of Appeals in the Borough of Manhattan, City of New York, to pick up the record on

April 30, 1964. It was not ready. Deponent again visited the Clerk's office on Monday, May 4, 1964 but the record was not available. He went back on May 6, 1964 and was told to return on May 7, 1964. On that day it was ready and deponent mailed the record on May 7, 1964.

The Clerk of the United States Supreme Court was informed of this situation by letter on each of the following days: April 30, 1964; May 4, 1964; May 6, 1964; and May 7, 1964.

Deponent respectfully submits that when a petitioner complies to the best of his ability and files his petition —which is a matter within his own control—within the time limit, he should not be penalized because of a delay of four days in filing record, the delay being due to circumstances beyond his control, particularly when such a short delay could not possibly be prejudicial to the United States.

FRANK SERRI

Sworn to before me this
2nd day of June, 1964.

MIRIAM GRIFFEL
Notary Public, State of New York
No. 24-1571300
Qualified in Kings County
Term Expires March 30, 1965